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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,140	01/19/2001	Donald Michael Black	5950-01-CA	3004

7590

09/16/2002

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EXAMINER

MATTHEWS, WILLIAM H

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 09/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/744,140

Applicant(s)

BLACK, DONALD MICHAEL

Examiner

William H. Matthews (Howie)

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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Response to Arguments

1. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1-6 are rejected under 35 U.S.C. 102(a) as being anticipated by

McCormick et al. (Rationale, Design, and Baseline Characteristics... 11/1/97).

4. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Seed et al. US PN 5,861,399.

See line 62 of col. 2 through line 20 of col. 3.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitney et al. US PN 6,180,660 in view of Jeevanandam et al. US PN 5,957,916.

Whitney et al. discloses the use of atorvastatin or fibrates (col. 2 lines 8-13) to prevent the need for coronary revascularization procedures (also see lines 45-51 of col. 4 and lines 17-33 of col. 3). Whitney et al. lacks the express written disclosure that the revascularization procedure is catheter based. However, Jeevanandam et al. teaches that is well known in the art to perform revascularization procedures with catheters.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method disclosed by Whitney et al. to perform the method in order to prevent or delay catheter based revascularization.

7. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bocan et al. WO 97/16184 in view of Jeevanandam et al. US PN 5,957,916.

8. Bocan et al. discloses a method of treating and preventing coronary artery disease by administering 5-80 mg of atorvastatin per day (see lines 12-25 of page 3 and lines 1-4 of page 5). Bocan et al. lacks the express disclosure of performing the method to prevent or delay catheter based revascularization. However, Jeevanandam et al. teaches that coronary artery disease is well-known in the art to be treated with catheter based revascularization. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the method disclosed by Bocan et

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al. to include the step of preventing or delaying catheter based revascularization as taught by Jeevanandam et al.

9. Claims 1,7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisgaier et al. US PN 5,648,387 in view of Jeevanandam et al. US PN 5,957,916.

Regarding claim 1, see lines 5-12 of col. 1.

Regarding claims 7-8, see lines 26-35 of col. 2 and lines 35-62 of col. 6.

Bisgaier discloses the method as useful for preventing and treating vascular diseases but lacks the express disclosure of preventing or delaying catheter based revascularization. However, Jeevanandam et al. teaches that vascular diseases are well-known in the art to be treated with catheter based revascularization.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the method disclosed by Bocan et al. to include the step of preventing or delaying catheter based revascularization as taught by Jeevanandam et al.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. US PN 6,214,887 to Cote et al. is related to claim 1. See column 2.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Matthews (Howie) whose telephone number is 703-305-0316. The examiner can normally be reached on Mon-Fri 7:00-4:30 (Every other Friday off).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-2708 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



WHM
September 10, 2002



Paul B. Preblich
Primary Examiner